

Key Points for *Rapanos* Army-EPA Joint Guidance

1. As a result of the Supreme Court decision on *Rapanos* (June 2006), in many circumstances the agencies will be conducting a more thorough and robust analysis when we are determining whether a particular water body is subject to Clean Water Act (CWA) section 404 jurisdiction (i.e., whether the water body is a jurisdictional “water of the United States”).
2. The Supreme Court decision requires that, in many instances, a “significant nexus” evaluation be conducted to support jurisdictional and non-jurisdictional determinations.
3. The Army-EPA *Rapanos* guidance effectively implements the Supreme Court’s decision.
 - The guidance does not expand or narrow CWA jurisdiction over waters of the U.S.
 - The guidance identifies, as non-jurisdictional under the CWA, erosional features, swales, small washes (characterized by low volume, infrequent, and short duration flow), and many ditches excavated wholly in and draining only uplands.
 - The guidance directs the agencies to more thoroughly document jurisdiction using a standardized form, and to post results on the Corps districts’ websites.
4. In addition, the Army and EPA will:
 - Eliminate the “phone home” provision associated with the Supreme Court decision in the *Solid Waste Agency of Northern Cook County (SWANCC)* guidance:
 - Originally, headquarters (HQ) required the districts to obtain concurrence for only those actions asserting CWA jurisdiction over any non-navigable, intra-state, isolated water body;
 - The guidance now requires that jurisdictional determinations for any isolated water body be elevated for an agency HQ review prior to the district’s making a final decision on jurisdiction;
 - Require that all actions undergoing a “significant nexus” evaluation be available for review by EPA; and
 - Allow EPA an opportunity to request a higher level review if there is a dispute.
5. To increase agency accountability, the Army-EPA *Rapanos* guidance calls for more transparency and public accessibility. All relevant materials associated with the guidance will be published on the internet for public access. Information on the Army-EPA *Rapanos* guidance may be found at <http://www.usace.army.mil/cw/cecwo/reg/>.
6. The Administration intends to undertake rulemaking, as fully informed through consultation with the interested public.